

MOTION TO RESPOND

JOSEPH MIZZONI #68549
 HIGH DESERT STATE PRISON
 PO BOX 650
 INDIAN SPRINGS, NV. 89070

FILED	RECEIVED
ENTERED	SERVED ON
COUNSEL/PARTIES OF RECORD	
Case Returned	
JUN 30 2017	
CLERK US DISTRICT COURT	
DISTRICT OF NEVADA	
BY:	DEPUTY

UNITED STATE DISTRICT COURT
DISTRICT OF NEVADA

JOSEPH MIZZONI
 Plaintiff

CASE # 3:15-CV-00499-MMD-WGC

VS.

STATE OF NEVADA, et al,
 Defendants

"MOTION TO RESPOND TO
NOTICE AVAILABILITY
OF VIDEO MARCH 28, 2015
AND OPPOSE"

COMES NOW, the plaintiff Joseph Mizroni #68549 Pro-se
 Respectfully request to file the above opposition Motion for Video
 on his §1983 Civil Rights Complaint PURSUANT TO 42 USC § 1983.

See; *Harris v. Kerner*, 404 U.S. 519 (1972) (Allegations of a prison complaint
 are held to less standards than formal pleading drafted by lawyers)

STATEMENT OF FACTS IN SUPPORT I

1. (FACT 1) Plaintiff Filed his First Amended Complaint on the 20th day of
2 March, 2016.

3
4 (FACT 2) On this First Amended Complaint plaintiff requested Video on
5 (Page 3 B. NATURE OF THE CASE TO Page 3c) through out, and at
6 the disciplinary hearing on 5-1-15 as stated in the #4983 Complaint.

7
8 (FACT 3) On this First Amended Complaint (Attached EXHIBITS) is a
9 INMATE REQUEST FORM dated the 5 day of April, 2015 TO WARDEN
10 Ms Walsh. Me asking for and why the Video and Witnesses are relevant
11 and told her to preserve the Video Inside Unit 5 to 7-A-38. Ms Walsh
12 Warden response: "ADHERE TO THE PROCESS!" for Video/WITNESSES/PICTURES."

13
14 (FACT 4) ORDER Filed 9-2-16 (Document 10) on (Page 4 LINE 6-12); (PAGE 4
15 LINE 19-20); (PAGE 5 LINE 13-20); (Page 6 LINE 25) all in which show
16 the Court recognized the Evidence, Witnesses, and in this case Video.

17
18 (FACT 5) Plaintiff Filed a "MOTION TO RESPOND TO DEFENDANTS
19 NOTICE OF ACCEPTANCE OF SERVICE" dated the 9 day of January, 2017.
20 Asking for Defendant to Accept Service of Process Under 40) on defendant
21 C. Smith, because the AG Erin L. Albright refused to accept service as ordered
22 several times prior to this, and never Filed any Motion on the Order
23 above Doc# 10, 9-2-16 to exclude Defendant Smith from the production
24 program or further follow the Order to take Smith as a Defendant
25 within (21) days for a limited appearance.

26
27 (FACT 6) The AG Erin L. Albright Filed a "OPPOSITION TO MOTION TO
28 RESPOND

I.

STATEMENT OF FACT IN SUPPORT I

(Continued)

1 TO DEFENDANTS NOTICE OF ACCEPTANCE OF SERVICE" dated
 2 the 26 day of January, 2017. And on her response she states
 3 on (Page 1 LINE 26-28) C. Smith Defendant was dismissed without
 4 prejudice with leave to amend. Then she goes on to (Page 2 Line 7-17)
 5 Under: II. ARGUMENT Here, this Court dismissed C. Smith without prejudice
 6 after reviewing Inmate Mizzoni's initial complaint (Id. at 9). This Court
 7 provided Inmate Mizzoni the opportunity to amend his complaint to
 8 include allegation that C. Smith personally participated in the disciplinary
 9 ~~hearing~~ proceeding (Id. at 7). Inmate Mizzoni failed to allege that
 10 C. Smith personally participated in the disciplinary hearing. Since Inmate
 11 Mizzoni failed to cure the deficiencies against C. Smith, C. Smith "is still"
 12 dismissed from this instant action-III CONCLUSION Since C. Smith has
 13 been dismissed from this instant action, Defendant respectfully request this
 14 Court deny Inmate Mizzoni's Motion to Respond to Defendant's Notice of
 15 Acceptance of Service"

16 This Attorney General uses case ORDER (Id. at 10) and (Id. at 7)
 17 and is lying that C. Smith didn't get ordered to be a
 18 Defendant and she commits perjury under penalty USC § 1746 and
 19 NRS Nevada Laws which is a felony. See; Document 10 ORDER
 20 dated 9-2-16 (PAGE 6 LINE 22-25) States: (Plaintiff alleges that Smith wrote a
 21 false report that resulted in a disciplinary hearing in which he did not
 22 receive due process. Plaintiff MAY PROCEED" on his Fourteen Amendment
 23 due process claim against DEFENDANTS Brown AND SMITH.)
 24 Then on PAGE 7 LINE 27-28) CONCLUSION III. It is further ordered that
 25 Plaintiff's Fourteenth Amendment due process claim will proceed against "DEFENDANTS"
 26 SMITH and Brown.

27 Plaintiff shows his (FACT 5) Page 2 LINE 18-25) and (FACT 6) Page 2 LINE 27-28 TO
 28 Page 3 LINE 1-26) in order

STATEMENT OF FACTS IN SUPPORT I

(Continued)

1 to show that AG Erin Albright has already committed perjury § 1746
 2 USC in order to win her case and then has Default Judgment Ordered
 3 against her and the Court reverses the Default with out any FRCP
 4 RULES or Case laws to support JAC of secretaries and staff and excuses
 5 for C. Smith even after him being served by USM Service. On this
 6 Motion for Video she lies and commits perjury with the Defendants
 7 under § 1746 USC that there is No Video on 3-28-15. And plaintiff will
 8 show in the rest of this opposing motion.

9
 10 (FACT 7.) On 2-9-17 Document 31 the Court Ordered a "SCHEDULING
 11 ORDER FOR CIVIL RIGHTS ACTIONS FILED BY INCARCERATED
 12 PRO SE PLAINTIFFS" ordering discovery by May 24, 2017.

13
 14 (FACT 8.) On March 9, 2017 AG Erin Albright files a "DEFENDANT
 15 BRANNON'S RESPONSES TO PLAINTIFFS REQUEST FOR INTERROGATORIES
 16 [Setone]" on (PAGE 2 LINE 13-28) INTERROGATORY NO. 5: Please state in your own
 17 words that on 3-28-15 was there eye witnesses inmates and Co's and Video cameras
 18 working inside and outside Unit 5, Outside Unit 4, inside and outside Unit 8, and
 19 outside Unit 7 and that as a disciplinary officer your policy to allow inmates
 20 to review such evidence is done how? And if not why?

21 RESPONSE TO REQUEST NO. 5: Objection. This discovery request seeks
 22 information not relevant to the subject matter of this lawsuit and not calculated to
 23 lead to the discovery of admissible evidence in violation of the collateral source
 24 rule. Objection. The information requested is confidential and if disclosed could
 25 lead to a compromise of prison security and safety.

26 Notwithstanding the objections and without waiving them, Defendants state;
 27 to my knowledge I believe that the institutional camera system was working
 28 only in Unit 5, outside.

I.STATEMENT OF FACTS IN Support I (continued)

1 Unit 4, outside of Unit 8 and outside of Unit 7 on this date. However
 2 the policy of the institution is to not allow inmates to review any video
 3 taken from institutional camera system due to safety and security reasons.
 4 (Interrogatory Request No 1-4 are addressed to C. Smith who is not currently
 5 a party to this litigation.) See; Page 3 LINE 1-15) INTERROGATORY NO. 6
 6 and RESPONSE TO REQUEST NO. 6 (Same questions on Video, and the Inspector
 7 General's Office should have Video to). Some answers by AG/Defendants.) The AG and
 8 Defendant had from 3-28-15 to 3 years per AR 405 to retain Fore Video see; AR 405 P 96 of 18 B. C.
 9 (FACT 9) On March 31, 2017 AG Erin Albright files a "DEFENDANT BRANNON'S
 10 RESPONSES TO PLAINTIFF'S FIRST REQUEST FOR ADMISSIONS," and on (Page 2 LINE 28)
 11 (2) ADMISSION REQUEST No. 1-10 are addressed to C. Smith who is not currently a
 12 party to this litigation.) And on (Page 2-3) Plaintiff ask on ADMISSION No. 13
 13 for Video to determine allegations on C. Smith in the area of that pert to
 14 lead to disciplinary. And on RESPONSE TO REQUEST FOR ADMISSION NO. 13:
 15 Plaintiff requested rotunda video Unit 5, and Brannon answer there was no
 16 Video footage of the incident to review. Therefore, there was no way I could
 17 assist with this request. (This shows Defendant Brannon did look at all video
 18 that plaintiff requested in Unit 5 A, B, C wings, Unit 4, Unit 7, Unit 8, but admits
 19 he had no video for the incident" only "with C. Smith in Unit 5 rotunda the
 20 only place where there's no cameras in the whole prison.) Also if the Court
 21 looks at ADMISSION No. 15 then RESPONSE TO REQUEST FOR ADMISSION No. 15:
 22 the viewing of Institutional camera system was not available. Inmates are not
 23 generally allowed to view the Institutional camera system as it is a safety and
 24 security concern. (Here the Defendant admits video on the video plaintiff
 25 request, but violates plaintiff's Due process rights to see video because the incident
 26 as to whole is from 8 PM to 9:30 PM and from what happen in Unit 5 all the
 27 way to Unit 8 to Unit 7 which was assault on plaintiff and/or Incident Report should all
 28 be Video taped See; NOTE AR 405 -5-

I.STATEMENT OF FACTS IN SUPPORT

(Continued)

1 P.9 6 of 18 B. (a) (b) (c) P.9 7 of 18 (d) and C. Wardens.

2
3 (FACT 10.) Plaintiff did file his "REQUEST TO DEFENDANTS FOR DISCOVERY
4 CONFERENCE UNDER FRCP 37(a)(1) LETTER" dated March 21, 2017 and on (pg-1)
5 plaintiff addresses Defendants Brannan and Smith. And on (pg-2: LINE 16-27) Plaintiff
6 request Any IAI Video Tape and specifies for what and where.

7
8 (FACT 11.) "ORDER" dated 4-17-17 (Document 47) (Page-4: Bottom page) states
9 'The court is not prejudging the issue, but on first blush it appears that
10 the video evidence (which Plaintiff claims has been admitted to exist) is central
11 to this case, and Plaintiff should be permitted to review that evidence in a
12 manner which alleviates any safety and security concerns espoused in Brannan's
13 objections.

14
15 (FACT 12.) On April 26, 2017 plaintiff filed a "MOTION SEEKING PERMISSION
16 TO OBTAIN BY COURT ORDER VIDEO TAPE EVIDENCE FOR THE NIGHT OF
17 3-28-15 IN/OUT UNITS 5, 4, 8, 7 AT NVCC PRISON UNDER LOCAL RULE
18 26-7 FOR §1983, BETWEEN 8 PM AND 930 PM." Plaintiff specifies each
19 detail and reasons why the Video is needed as evidence in the Units Asked
20 for and, none is a security or safety risk, its all open stationary Camras
21 and hand held Video camras in which in Unit 5 rotunda and Unit 4 rotunda the
* 22 monitors are visible to all inmates day and night to see all angles of
23 Video footage inside and out Units on the Monitor in Unit Bule's. See, AR 405 PG
24 6 of 18 and 7 of 18 B. and C. Must keep Video 3 years and Video's on Force Used.

25 (FACT 13) AG ERIN Albright files a "DEFENDANT BRANNAN'S ~~RESPONSE~~
26 RESPONSE TO PLAINTIFFS REQUEST FOR PRODUCTION OF DOCUMENTS [etone]
27 dated the 11 day of April, 2017., and on (PAGE 4 (LINE 12-28) ~~RESPONSE~~
28 shows plaintiff asked for -6-

I.STATEMENT OF FACTS IN SUPPORT I (Continued)

1 the Video at point on REQUEST No.4. and on RESPONSE TO REQUEST
 2 No.4: (Defendant objects to Request No.4 on the ground that appears to be
 3 made for improper purposes given that 1) Plaintiff is an inmate and Defendant is a
 4 prison official; and 2) the request has only slight or marginal relevance to
 5 plaintiff's Claims.) It is relevant, it shows punishment on Video before plaintiff
 6 was given his 5-1-15 Disciplinary Hearing, and it shows that video exists and
 7 should of been seen by Plaintiff at his Disciplinary and at least now. The
 8 AG says there's no Video, which a Violation of NACC Policies. See; AR 405 Pg 6 of 18
 9 to 7 of 18 B. and C. must store Video when force is used for 3 years.

10
 11 (FACT 14) Defendants file a "OPPOSITION TO MOTIONS SEEKING PERMISSION TO
 12 OBTAIN VIDEOTAPE EVIDENCE FOR THE NIGHT OF 3-28-15 IN/OUT UNITS
 13 5, 4, 8, 7 AT NACC PRISON UNDER LOCAL RULE 16-7(B) FOR § 1983,
 14 BETWEEN 8PM AND 930PM (SIC) (ECF No. 50)" on the 30 day of May, 2017.
 15 On Erin Albright's response for the Defendants it states on (PAGE 1-LINE 23-28)
 16 that Plaintiff asks for Video on March 28, 2015 of housing Units 4, 5, 7, and 8
 17 at NACC. Then from (PAGE 1 LINE 28 TO PAGE 2 LINE 1-7) states: Brannon admits
 18 to his knowledge on March 28, 2015 the institutional camera system was working
 19 in housing Unit 5, outside Unit 4, outside housing 7, and outside housing Unit 8. (Id.)
 20 He also responded that the policy of the institution does not allow inmates
 21 to review any video from the institutional camera system due to safety and security
 22 concerns. (Id.) See; (FACT 10) (PAGE 6 LINE 3-6) of this Motion, to show plaintiff
 23 filed a Request under FRCP 37(a) for Discovery Conference. She never had one
 24 or set one up.

II ARGUMENT

25
 26 Plaintiff shows good cause why Video is relevant evidence on his (facts) On
 27 the Defendants argument (PAGE 2 LINE 1-5) on 3-28-15 no Video exist in the rehabs
 28 of housing Unit 5, an area that does -7-

II.ARGUMENT

(Continued)

1 not have video coverage; therefore, no video footage of the incident
 2 exists. (ECF NO62 in 3:15-cv-00313 At 5-6). On (PAGE 2 LINE 6-28) states
 3 In preparation for the June 15, 2017 Hearing for Video 3-28-15 in
 4 Unit 5 ABC wings inside and Unit 5 outside, Unit 4 outside, IN/OUT UNIT 8, OUTSIDE UNIT
 5 7 Between 8PM and 930PM at NACC (Exh A). ~~Further~~ The Clients to double
 6 check Video Files regarding the existence of Video footage and they state
 7 does not depict the incident involving inmate Mizzoni. Then it goes on to
 8 state: The only time a video recording from camera in housing units 4, 5, 7 and 8 is
 9 indefinitely kept by the NACC is if there is an incident (ie, riot, assault against
 10 a correctional officer, assault against an inmate) that occurred and the incident was
 11 recorded on Video (id.) IF that occurs, the NACC will make a copy of the
 12 Video recording and retain the recording for its records (id.) Since the March 28, 2015
 13 incident occurred in an area where there is no video camera coverage, and there is no
 14 recorded Video footage available to provide Mizzoni. The video footage from
 15 the date has been recorded over as the Video footage is on a recording loop and
 16 is not indefinitely retained by NACC or NACC.

III PLAINTIFFS ARGUMENT

17
 18 Plaintiff states there was a incident on 3-28-15 in rotunda of Unit 5 by
 19 Unit Bible door. The incident continued from Unit 5 to Unit 8 to Unit 7 as
 20 stated by almost all officers involved. See; MIZZONI 313: DEF EXH A-001
 21 to OIO Officers Reports. CASE 3:15-cv-00313-MMD-VPC. This was a incident
 22 that started in Unit 5 rotunda by plaintiff being assaulted and continued to be
 23 assaulted to Unit 8 as stated by plaintiff on his §1983 First Amended
 24 Complaint. And because this was written up as a false report by C. Smith
 25 stating plaintiff hit him the whole incident and forced movement from Unit 5 to
 26 Unit 8 and then Unit 7 is required to have Video surveillance. See; NACC AR 405
 27 B.(a) pg 6 of 18 also (b) and (C) and pg 7 of 18 (d.) IF the use of force is still occurring
 28 when the staff Video recorder arrives -8-

III.PLAINTIFFS ARGUMENT

(Continued)

the incidents shall be recorded to capture the unfolding events while waiting for a response team, even if through windows, fences, bars, or even if far away, etc. This is Spontaneous use of force. See AR 405 pg 6 of 18 (a) Where force was used spontaneously, regardless of injuries reported contemporaneous with the event, the area supervisor/incident commander "shall" immediately review, if available, any unit video surveillance that may have captured the use of force.

(b) If the use of force was captured on video, from ~~any~~ "ANY ANGLE" on camera, the area supervisor/incident commander "shall" be responsible for preserving that recording in a manner and location that is easily retrievable in the event review is needed. The Video "MUST" be maintained for no less than (3) three years from the date force was used.

(c) If no cameras were operational in that Unit or no cameras captured the use of force, the area supervisor/incident commander "shall" make a notice of same in the USE of Force Incident Report.

pg 7 of 18 (d) In addition to and apart from "any" surveillance footage from stationary cameras that may exist, video footage "shall" also be recorded via a hand-held camera as follows:

- As soon as the shift supervisor becomes aware that force is being used or has been used, a staff member "shall" be directed to immediately obtain a Handheld Video camera and "shall" be ordered to the scene where force has been used.

- Immediately upon arrival to the scene, the staff video recorder "shall" begin recording, noting the time and date the recording begins and identify himself/herself as video recorder. The staff video recorder "shall" continue to take footage until the area supervisor/incident commander decides the incident is over and instructs the staff video recorder to cease recording.

III.PLAINTIFFS ARGUMENT

(CONTINUED)

- For any breaks in recording, the recording staff member must sign back on with the date, time and reason for the breaks in recording

Pg. 7 of 18 C. The Warden / Division head "SMALL" ensure that Use of Force "Operational Procedures" are specific on the process for the recording of Use of Force incidents and storage of the Video recordings. See; Attached EXHIBIT-A. INMATE REQUEST FORM for Video, Pictures, witnesses dated 4-5-15 to Warden Walsh, Answer by her "ADHERE TO THE PROCESS"

See; ATTACHED EXHIBIT-B. ORDER dated the 16 day of February 2010 CASE CF-0708024 7th/JUD/DESC/CAES/INM/ELY (PAGE 1-2) on Video in this case on excessive force allowed on two incidents by a Judge, inmates can view video. See; Attached EXHIBIT-C (Page 8 LINE 1-11) on "ORDER GRANTING IN PART AND DENYING IN PART PETITION FOR WRIT OF HABEAS CORPUS, Case# HC-0806011, Dept. No.1, dated 9-24-2008. See; Young v. Karn. 926 F.2d 1396, 1400-2 (2nd Cir.1991) (inmate charged with writing a threatening letter should have been permitted to see the letter, and the hearing officer should have read the letter rather than relying on a description of it in the disciplinary report.) See also; Yang v. Lynch, 846 F.2d 960, 963 (4th Cir.1988) (Due process may require production of evidence when it ~~is~~ is the dispositive item of proof, its critical to the inmates defense; it is in the custody of prison officials and it could be produced without impairing institutional concerns.)

The Defendants argument does not paint the "whole" Incident was Spontaneous Use of force pre AR 405 and all the Officers admit it from Unit 5 to Unit 7 what force they used including the escort from 5 to 8 to Unit 7 is all spontaneous force and Video Handheld and Stationary Cameras are required and to be preserved 3 years. See; Defendants Exhibits C DEF-EXC-001 Staff Name SHERMAN FRANK, he admits Video in Unit 5 A,B-C wings and is supposed to have the Video Plaintiff requested and

III.PLAINTIFFS ARGUMENT

(continued)

1 This Officer is the Shift Commander, on CASE# 3:15-CV-00313-MMD-VPC.

2 See; Marquez v. Mann, 192 A.D. 2d 100, 600 N.Y.S.2d 285 (3d Dept. 1993)

3 (Failure of hearing officer to allow inmate to review Video Tape of incident in
4 question at disciplinary hearing denied inmate his Constitutional right to answer the
5 evidence therefore, the record of the incident should be expunged) See; Wolff v.
6 Mc Donnell, 418 U.S. 539, 94 S.Ct. 2963, 41 LEd. 2d 935 (1974).

7 See; Northern Nevada Association of Injured Workers v. Nevada State Indus.
8 Insurance System (Nov. 1991) 807 P.2d 728, 107 Nev. 108; SAYS: "State Agencies must"
9 follow their own Rules, Failure to Follow a Non-Discretionary Rule Constitutes a
10 Non-Discretionary Act." (See Also; NRS 41.031, And 41.032, And 616.500(7))

11 Where NDOC AR, OPS, IPS say that something has to be done, i.e. Forced movements
12 and/or Extraction must be Video taped, The Absence of a Video (because one wasn't
13 taken or because it was lost): (1) Violates a non-discretionary Policy; (2) Constitutes a
14 non-Discretionary Act; (3) Constitutes Destruction of Evidence, (spoliation).

15 See; Kimberly Bass-Davis v. Katui Davis (Nov. 2006) 134 P.3d 103 122 Nev. 442;
16 SAYS: Destruction of Evidence that is not willful still Evidence would have been
17 unfavorable to the Destroyer, "Destruction Evidence that is willful warrants Jury
18 Instruction for Presumption that destroyed evidence would have been unfavorable to the
19 destroyer." The difference between an inference and a presumption is that while the
20 Jury "Must" accept a presumption as true it does not have to accept an inference as true.

21 Where the destroyer destruction of evidence violates a written policy, Said Destruction
22 is deemed willful." NRS 41.031 says that: "The State of Nevada, its Agencies, and
23 their employees waive their immunity from being sued in State Court for
24 non-Discretionary acts." (Also See; NRS 1.037). Where lawsuit is against NDOC
25 Employee, destruction of evidence by "any" other NDOC Employee is still held against
26 lawsuit party under the "Law of Agency." See; NDOC Grievance # 2006-29-98671
27 on CASE# 3:15-CV-00313-MMD-VPC (Pg 1-3) Dated 4-15-15 8pm Request for all video showing
28 and hand held, Pictures, Witnesses. - 10 -

IV.CONCLUSION

Wherefore Plaintiff shows good cause why he should receive all the Video "Statement and Handheld" for this case and case # 3:15-cv-00313-MMD-WGC to show "Facts" to the Court, Jury, and Defendants how he was punished before Due Process of law under the 14th Amend USCA, and other related facts to use as evidence in a Jury trial as he ask for and proves with his "Points and Authority" The Court Judge on 6-15-17 said at that telephonic hearing to the AG Erin Albright to produce the Video at a minimum in closed camera, because she states the Video was a security risk on inmates seeing blind spots etc., Nothing about the Video being Destroyed, misplaced, etc., the Defendant Brannan had time to see all the Video and he admits it more than once and Now theres No Video? This is Destruction of Evidence to favor the Defendants and hide the truth from me, the Court. and a Jury. This is a felony to destruction of Justice, and it should be told to a Jury as that. Plaintiff request all the Video he ask for. First the Defolt on C Smith and now no video. (Attached EXHIBITS A-B-C)

RESPECTFULLY SUBMITTED

this 27 day of JUNE 2017

BY Joseph Muzi
 JOSEPH MUZZI
 #68549

AFFIDAVIT OF JOSEPH MEZZONE #68549 IN PRO-SE

1 STATE OF NEVADA)

2 : ss

3 COUNTY OF CLARK)

4
5 (1) Plaintiff sworn in support of the Motion duly and says;

6
7 (2) Plaintiff in Pose Joseph Mezzone #68549 in support of the
8 affidavit here for "MOTION TO RESPOND TO NOTICE AVAILABILITY
9 OF VIDEO MARCH 28, 2015 AND OPPOSE" on his §1083 IN THE
10 UNITED STATES DISTRICT COURT DISTRICT OF NEVADA and does so in
11 the truth under penalty and perjury §1746 USC 28 / NRS LAWS.
12

13
14 RESPECTFULLY SUBMITTED

15 this 27 day of June 2017

16
17 BY: Joseph Mezzone
18 JOSEPH MEZZONE
19 #68549
20
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27
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CERTIFICATE OF SERVICE BY MAILING

I, JOSEPH MIZION #6849, hereby certify, pursuant to NRCP 5(b), that on this 27 day of JUNE, 2017, I mailed a true and correct copy of the foregoing, "NOTION TO RESPOND TO NOTICE AVAILABILITY OF VIDEO MARCH 28, 2015 AND OFFER" by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid, addressed as follows:

1) Clerk, U.S. DISTRICT COURT
District of Nevada
400 S. VIRGINIA Street Room 301
Reno, NV. 89501

2) Office AG/NEW
MS Albert
100 N - Carson Street
Reno, NV 89501-4717

3) Plaintiff Address
H.D.S.P.
PO Box 650
Indian Springs, NV 89707

CC:FILE

DATED: this 27 day of JUNE, 2017.

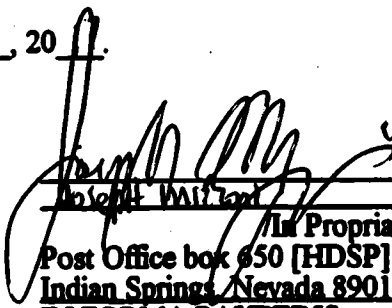

Joseph Mizion #6849
In Propria Personam
Post Office box 650 [HDSP]
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

EXHIBIT - A-

EXHIBIT - A-

EXHIBIT-A

INMATE REQUEST FORM

1.) INMATE NAME	DOC #	2.) HOUSING UNIT	3.) DATE
Joseph Mizzoni	68549	7-B-62	4-5-15

4.) REQUEST FORM TO: (CHECK BOX)

☐ CASEWORKER ☐ MEDICAL ☐ LAW LIBRARY ☐ CANTEN ☐ DENTAL
☐ EDUCATION ☐ VISITING ☐ SHIFT COMMAND
☐ LAUNDRY ☐ PROPERTY ROOM ☒ OTHER

5.) NAME OF INDIVIDUAL TO CONTACT: MS WALSH (Please Return all Video/Still pictures)

6.) REQUEST: (PRINT BELOW) MAN, I am in 7-B-62 I went to a hearing on 4-4-15 and Received my Notice of charges and was real everything in C/O Smith's Verding Unit 5 on 3-28-15 he said he made inmates to lock it up and they did, then he said he ordered several "Inmates" to get back because this retunda was full of other inmates. AT the hearing I requested those inmates in the retunda and around myself and C/O Smith NAMES on Affidavits to or any other inmates version of events to be at my disciplinary. Also please request all video/still pictures from inside Unit 5 to 7-A-38 on 3-28-15 in order to confront witness and evidence with charges against me. Man. Thank You

7.) INMATE SIGNATURE Joseph Mizzoni DOC# 68549

8.) RECEIVING STAFF SIGNATURE _____ DATE _____

9.) RESPONSE TO INMATE

Adhere to the process

10.) RESPONDING STAFF SIGNATURE RW DATE 4/17

EXHIBIT-B-

EXHIBIT-B-

2-18-10

<3-5-07> (i)
11-6-07

<2>

VIDEO AND DISCIPLINARY TAPE 4-3-05
AND ALL MEDICAL RECORDS³⁷

FILE

1 CASE NO. CF-0708024

2 DEPT. 2

2010 FEB 18 PM 4:06

3 IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

4 IN AND FOR THE COUNTY OF WHITE PINE

WHITE PINE COUNTY CLERK

DEPUTY

* * *

7 JOSEPH L. MIZZONI,

8 Plaintiff,

10 V.

ORDER

11 NDOC WARDEN McDANIEL, et. al.,

13 Defendants

14 Plaintiff Joseph L. Mizzoni filed his Motion Seeking Permission to Object to Joint
 15 Conference Report and Obtain Court Order Medical and Video CD-Rom and Reports on Incidents of
 16 all Excessive Force. Defendants have objected on the basis of the administrative regulations which
 17 govern Ely State Prison.
 18

19 Plaintiff's motion to object to the Joint Case Conference Report is denied. Each party
 20 is required to set forth its list of exhibits and witnesses in the Joint Case Conference Report, whether
 21 or not the opposing side agrees. The decision of whether the exhibits will be admitted at trial and
 22 whether the witnesses will be allowed to testify is reserved for either pretrial motions, pretrial
 23 conferences or for trial, and is not appropriate at this time.

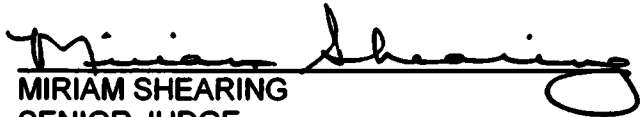
24 This court will not interfere with the administration or the administrative regulations
 25 governing Ely State Prison and order the production to plaintiff of items not allowed under Prison
 26 regulations. However, the items that plaintiff has asked to be produced are relevant or can lead to
 27 relevant material in this case. Plaintiff has asked for the release of his medical records to this court
 28

1 for trial. Therefore, defendants are ordered to produce to this court for in camera inspection:

- 2 1. All medical records pertaining to the injuries and treatment of plaintiff resulting
- 3 from the incidents of March 5, 2007 and November 6, 2007;
- 4 2. Any and all recordings of the incidents of March 5, 2007 and November 6, 2007
- 5 whether on CD-ROM or in any other form; and
- 6 3. Any recording of the disciplinary hearing held on April 3, 2007.

7 IT IS SO ORDERED.

8 Dated this 16th day of February, 2010.

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11 
12 MIRIAM SHEARING
13 SENIOR JUDGE
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1 The trial will start on November 9, 2010 and continue Tuesdays through Fridays until
2 concluded or by February 19, 2010.

3 IT IS SO ORDERED.

4 Dated this 16th day of February, 2010.

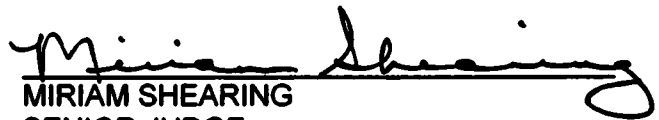
5
6 
7 MIRIAM SHEARING
8 SENIOR JUDGE
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my HABEAS Report

(EXHIBIT 7)C

FILED

2009 SEP 24 PM 2:47

Case No. HC-0806011

Dept. No. 1

WHITE PINE COUNTY CLERK

BY *Manzoni*
DEPUTY

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF
NEVADA, IN AND FOR THE COUNTY OF WHITE PINE

JOSEPH L. MIZZONI L

Petitioner,

**ORDER GRANTING IN PART AND
DENYING IN PART PETITION FOR WRIT
OF HABEAS CORPUS**

vs.

WARDEN, MR. McDANIEL,

Respondent.

FACTUAL AND PROCEDURAL HISTORY

On June 30, 2008, Joseph L. Mizzoni (Petitioner), an inmate at Ely State Prison, filed a Petition for Writ of Habeas Corpus. Petitioner claims his 14th Amendment right to due process was violated in four incidents occurring between March 5, 2007 and November 6, 2007, and asks the Court to expunge the disciplinary sanctions from his record. A Motion to Dismiss and Answer was filed on August 15, 2008. The Court has reviewed the file and finds that no further briefing or oral argument is necessary.

A. Incident One

According to the Notice of Charges, on March 5, 2007, Petitioner was present at an interview with Correctional Caseworker Specialist Trainee Large wherein Petitioner became

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SEVENTH JUDICIAL DISTRICT COURT
STEVE L. DOBRESCU
DISTRICT JUDGE
DEPARTMENT 1
WHITE PINE, LINCOLN AND EUREKA COUNTIES
STATE OF NEVADA



(EXHIBIT 11C)

1 agitated and verbally abusive. After the meeting, Petitioner threw himself onto one of the
2 officers escorting him back to his cell and was forcibly restrained. Petitioner was restrained on
3 the floor and C.E.R.T. officers were called to escort Petitioner back to his cell. Petitioner does
4 not dispute these facts, however, the report states that medical staff was called and Petitioner
5 states he was denied medical attention and excessive force was used to restrain him.

6 Petitioner was charged with MJ3 (battery), MJ28 (organizing, encouraging or
7 participating in a work stoppage or other disruptive offense), and G18 (delaying, hindering or
8 interfering with a correctional employee in the performance of his duties). At the Disciplinary
9 Hearing Petitioner was found guilty of all three charges and was sanctioned and forfeited 180
10 days credit, received 365 days of disciplinary segregation, and lost 30 days of canteen privileges.

11 **B. Incident Two**

12 According to the Notice of Charges (NOC), on August 20, 2007, after being escorted
13 back to his cell, and while Petitioner's restraints were being removed, Petitioner spat through the
14 food slot at Officers Sommervold and Ator, hitting both of them. Petitioner was charged with
15 MJ3 (battery), and MJ28 (organizing, encouraging or participating in a work stoppage or other
16 disruptive offense). The facts are disputed as to whether Petitioner refused to attend the
17 Disciplinary Hearing or was not permitted to attend. Petitioner also disputes the sanctions
18 charges because he requested and was denied the right to put on evidence in his defense. At the
19 hearing, he was found guilty and sanctioned 12 days of disciplinary detention, 365 days of
20 disciplinary segregation and forfeited 149 days of statutory time.

21 **C. Incident Three**

22 According to the NOC, on September 30, 2007, Petitioner refused his meal tray and
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(EXHIBIT 11C)



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1 became agitated. He propelled an unknown liquid onto the Tier and his water was shut off as a
2 result. While the officer cleaned up the liquid, Petitioner again propelled an unknown liquid,
3 striking the officer. Petitioner does not dispute these facts. Petitioner was charged with G18
4 (delaying, hindering or interfering with a correctional employee in the performance of his
5 duties), MJ28 (organizing, encouraging or participating in a work stoppage or other disruptive
6 offense), and MJ40 (propelling). Because of these charges, Petitioner was sanctioned and
7 forfeited 182 days of credit.
8

9 **D. Incident Four**

10 According to the NOC, on November 5, 2007, Petitioner became disruptive in the
11 recreation yard by kicking at the plexi-glass, yelling obscenities at staff and making other
12 statements and gestures. At 12:05am on November 6, 2007, Petitioner complied with orders to
13 be restrained and escorted from the recreation yard. Petitioner complied with orders for a body
14 search, but became verbally abusive. While being escorted back to his cell from the showers
15 where the search took place, Petitioner began yelling and twisting away from officers. He also
16 tried to pull away from officers and was placed on the floor. After being examined by medical
17 staff, Petitioner was returned to his cell where he attempted to pull away from officers trying to
18 remove his wrist restraints through the food slot. He further yelled at staff, finally complying
19 and the restraints were removed. Petitioner disputes these facts, as he requested videotaped
20 surveillance records be admitted to the hearing.
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23 Petitioner was charged with G9 (abusive language), G14 (failure to follow rules and
24 regulations), and MJ25 (threats). The Disciplinary Hearing for these charges was held on
25 December 5, 2007, where he was found guilty and sanctioned 180 days disciplinary segregation
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and 90 days loss of yard privileges.

DISCUSSION

While prisoners do not leave all their constitutional rights at the prison gate, these rights are necessarily limited by their lawful incarceration.¹ As a result, Due Process requirements in the prison setting are lessened.² “The requirements of Due Process are flexible and depend on a balancing of interests affected by the relevant government action.”³ Therefore, “in identifying the safeguards required by Due Process, the Court has recognized the legitimate institutional needs of assuring the safety of inmates and prisoners, avoiding burdensome administrative requirements that might be susceptible to manipulation, and preserving the disciplinary process as a means of rehabilitation.”⁴

[DUE PROCESS]

When a prison disciplinary hearing results in the loss of statutory good time credits, minimal Due Process rights entitle a prisoner to: (1) advance written notice of the charges, (2) a qualified opportunity to call witnesses and present documentary evidence, (3) a written statement by the factfinder of evidence relied upon, and (4) a sufficiently impartial factfinder.⁵ In addition, the disciplinary hearing officer’s decision must be supported by some evidence.⁶ While there are due process rights applicable to statutory good time, [disciplinary segregation, is a condition of confinement and does not have an associated liberty interest.⁷]

The court will consider these incidents in order:

A. March 5, 2007

¹ *Sandin v. Conner*, 515 U.S. 472, 431 (1995).

² *Superintendent v. Hill*, 472 U.S. 445, 454–55 (1985).

³ *Id.*

⁴ *Id.*

⁵ *Id.*; *Wolff v. McDonnell*, 418 U.S. 539, 563–69 (1974).

⁶ 472 U.S. at 454.

⁷ 515 U.S. at 431. (SANDIN)



(EXHIBIT 10) C

1 Petitioner claims his due process rights were violated because Lt. Jones answered the
2 emergency grievance and then later conducted the disciplinary hearing. Neither Petitioner nor
3 the State has presented a copy of the emergency grievance Petitioner claims to have filed,
4 however the State does not deny that Lt. Jones investigated the grievance.

5 As stated in *Wolff*, the factfinder is required to be "sufficiently impartial."⁸ Additionally,
6 AR 707.1(2)(A)(8)(c) states that "[a]ll supervisors involved in the disciplinary process should be
7 impartial in that they . . . [a]re not also the Preliminary Hearing Officer for the same offense."
8 Lt. Jones' signature appears on the NOC as the supervisor on duty for March 5, 2007. He also
9 signed the Summary of Disciplinary Hearing as the Disciplinary Hearing Officer. Because
10 Respondent does not dispute the role played by Lt. Jones in this incident, acting as both
11 investigator on the grievance and disciplinary hearing officer, relief should be granted.⁹

12 B. August 20, 2007

13 Petitioner challenges the sanctions resulting from this incident based on: (1) partiality of
14 guards escorting him to the hearing, (2) being denied the ability to present evidence in his
15 defense at the hearing, and (3) not being provided a copy of the findings of the disciplinary
16 hearing so that he could file an appeal.

17 1. Partiality of Guards

18 Petitioner challenges these sanctions because one of the guards escorting him to the
19 hearing, Officer Ator, was involved in the incident. Petitioner fails to state why Officer Ator's
20 escort to the disciplinary hearing would violate AR 707.1(2)(A)(8)(c-d). Officer Ator was not
21 the hearing officer for this offense; Lt. Falge in fact presided over the hearing. Therefore, relief
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25 ⁸ 418 U.S. at 571.

26 ⁹ *Id.*

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1 should be denied as to this incident.

[EVIDENCE]

2 2. Right to Present Evidence at Disciplinary Hearing

3 As stated in AR 707.1(2)(B)(3)(e)(6), "[i]f the inmate pleads 'not guilty,' they shall have
4 the opportunity to make a statement and present evidence to the Disciplinary Hearing Officer."
5 In *Wolff*, the United States Supreme Court held that an "inmate facing disciplinary proceedings
6 should be allowed to . . . present documentary evidence in his defense when permitting him to do
7 so will not be unduly hazardous to institutional safety or correctional goals."¹⁰ Based on *Wolff*,
8 Petitioner should have been afforded the opportunity to present the towel as evidence, however,
9 Petitioner cites no law providing him a right to have DNA evidence processed and submitted in a
10 disciplinary proceeding.
11

12 As stated in *Hill*, "the requirements of due process are satisfied if some evidence supports
13 the decision by the prison disciplinary board to revoke good time credits."¹¹ This standard is met
14 when "there [is] some evidence from which the conclusion of the administrative tribunal could
15 be deduced" ¹² This need not be accomplished by "examination of the entire record,
16 independent assessment of the credibility of witnesses, or weighing of the evidence."¹³ Rather,
17 the relevant question is whether there is any evidence in the record that could support the
18 conclusion reached by the disciplinary board."¹⁴ While Petitioner was not permitted to present
19 evidence that there was an alternate source of the propelled fluid, the incident happened when
20 Petitioner was being returned to his cell and there does not appear to have been any other inmate
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23 _____
24 10 418 U.S. at 564.

25 11 472 U.S. at 455.

26 12 *United States ex rel. Vajtauer v. Commissioner of Immigration*, 273 U.S. 103, 106 (1927).

13 472 U.S. at 455.

14 *Id.*, at 456.

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1 in the vicinity. Petitioner does not otherwise show how the towel would have been relevant or
2 exculpatory. The Court finds that, in relying on the statement of Officer Sommervold, the
3 disciplinary hearing officer's decision was based on the some standard of evidence and no relief
4 should be granted because Petitioner was not allowed to present the towel.

5 3. Copy of Findings of Disciplinary Hearing

6 According to AR 707.1(2)(B)(3)(e)(12)(d), "[a]t the conclusion of the hearing, the inmate
7 shall receive a written statement of the findings, including the evidence relied upon and the
8 sanctions imposed." At the disciplinary hearing held on September 21, 2007, Mizzoni was found
9 guilty of the charges but was not given a copy of the findings with which to file an appeal of the
10 ruling. Respondent does not address this in their Answer. According to AR
11 707.1(2)(B)(3)(e)(14)(a), appeals of Disciplinary Hearings shall be filed within 15 days of the
12 conclusion of the disciplinary hearing. Because Petitioner was denied a copy of the findings
13 with which to file an appeal, relief should be granted for this incident.

14 C. October 16, 2007

15 Petitioner, for unstated reasons, was not permitted to attend the disciplinary hearing
16 associated with this incident. As a result, he challenges the imposed sanction of 182 days of
17 credit, 180 days of disciplinary segregation and loss of privileges. The State argues that, as in
18 *Sandin v. Conner*, disciplinary segregation is a condition of confinement and does not have an
19 associated liberty interest.¹⁵ Therefore, Petitioner is not entitled to relief for the 180 days of
20 disciplinary segregation. However, Petitioner is entitled to reinstatement of the 182 days of
21 credit.
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26 15 515 U.S. 472, 431 (1995).

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(EXHIBIT 7) C



(EXHIBIT C)

D. November 6, 2007

Petitioner challenges the sanction of 180 disciplinary segregation, 90 days loss of exercise yard privileges and other privileges relating to this incident because he was not permitted to review videotape of the incident. Petitioner relies on a New York case, *Marquez v. Mann*, where the Court held that the failure of the hearing officer to permit an accused to review videotape relied upon during the hearing resulted in petitioner's loss of "his regulatory right to reply to the evidence against him."¹⁶ Pursuant to this case, Petitioner should have been able to view the video tape. However, disciplinary segregation is a condition of confinement and does not have an associated liberty interest.¹⁷ Therefore, Petitioner is not entitled to relief for this incident.

Good cause appearing,

IT IS HEREBY ORDERED that Petitioner's Petition for Writ of Habeas Corpus is **GRANTED IN PART AND DENIED IN PART** as follows:

As to Incident One, relief is granted and 180 days of credit are reinstated.

As to Incident Two, relief is granted and 149 days of credit are reinstated.

As to Incident Three, relief is granted and 182 days of credit reinstated.

As to Incident Four, no relief granted. 441

Dated this 24TH day of September 2008.


DISTRICT COURT JUDGE

¹⁶ *Marquez v. Mann*, 192 A.D. 2d 100, 103 (1993 N.Y. App. Div.).
¹⁷ 515 U.S. 472, 431 (1995).

(EXHIBIT C)

SEVENTH JUDICIAL DISTRICT COURT
STEVE L. DOBRESCU
DISTRICT JUDGE
DEPARTMENT I
WHITE PINE, LINCOLN AND EUREKA COUNTIES
STATE OF NEVADA

